

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

WESTPORT INN

Employer <sup>1</sup>

and

UNITED FOOD AND COMMERCIAL  
WORKERS, LOCAL 371, CLC

Petitioner

Case No. 34-RC-2162

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Employer operates a hotel in Westport, Connecticut (herein called the hotel). The Petitioner seeks to represent a unit consisting of an unspecified number of full-time and regular part-time front desk clerks, housemen, room attendants, the inspectress, breakfast associates, wine bar associates and the night auditor. There is no history of collective bargaining involving the employees in the petitioned-for unit. Although otherwise in accord with the scope and composition of the unit, the Employer would

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<sup>1</sup> The Employer's name appears as corrected at the hearing.

exclude the inspectress as a supervisor within the meaning of Section 2(11) of the Act. For the reasons noted below, I find no merit to the Employer's contention.

I. FACTS

A. Overview of Operations

Primarily responsible for the operation and overall supervision of the facility is General Manager Lance Herman. Reporting directly to Herman are the Director of Sales, the Controller, and the Director of Operations. Reporting directly to the Director of Operations are the Chief Engineer, the Front Office Manager, and the Executive Housekeeper. The executor housekeeper, Martha Austin, oversees all work performed by the disputed Inspectress, the room attendants, the housemen, and the laundry attendants.

The hotel consists of two separate buildings. The "traditional" building, which is closest to the street, contains two-thirds of the guest rooms and a restaurant. The "deluxe" building, which is located to the rear of the traditional building to which it is connected by a second-floor bridge, contains the remaining guest rooms. It also contains the reception/front desk, an atrium area utilized for breakfast and wine service, the sales office, the controller's office, the housekeeping department, and the engineering department.

The employees in the petitioned-for unit work on either the first or second shift. The first shift is approximately 8:00 am to 4:00 pm, and the second shift is approximately 4:00 pm to 11:00 pm. There are eight room attendants who are responsible for cleaning guest rooms. They are all assigned to work on the first shift, and each is assigned to clean a particular "section" of rooms within the hotel. Their written job description sets forth in detail the exact procedure they are to follow in cleaning guest rooms. The job description further reflects that, in accordance with the Employer's policy and practice, the first rooms to be cleaned by each room attendant are those where the guest has checked out. The record reveals that there are four housemen who are responsible for assisting the room attendants by removing dirty linen and trash from the room attendants' carts, and re-supplying the carts with linen and other supplies needed for cleaning the rooms. Two housemen are assigned to the first

shift and one is assigned to the second shift. The record does not reflect the number of laundry attendants, their duties, or the shift that they work.

Each day, Executive Housekeeper Austin conducts a brief “lineup” or “pre-shift section meeting” with all assigned room attendants, including the inspectress, Edith Johnson. At this meeting, the room attendants are given their cleaning assignments, along with any particular expectations or instructions for cleaning rooms that day. The assignments, which are made by Austin, are based upon a report that is generated each morning showing all occupied rooms that need to be cleaned, including those that are being vacated and, as a result, need to be cleaned first. The room attendants are typically assigned to clean the same section of rooms each day. Daily variation in room assignments may result from the need to cover for absent room attendants or to balance the overall workload. In this regard, it is undisputed that the cleaning of vacated rooms requires more time and work than cleaning rooms that continue to be occupied by guests.

B. The Inspectress

Inspectress Edith Johnson was originally employed by the hotel in July 2000 as a “housekeeper”. She left her employment with the hotel in 2001 due to illness, and was re-hired in October 2003. At that time, she was told by General Manager Herman that she was “starting at the bottom” as a “housekeeper”, at a pay rate of \$9.25 per hour. Although she was not given a job description at the time of her re-hire, she began working as a room attendant. Johnson testified that, within a few days of beginning work as a room attendant, she was told by Executive Housekeeper Austin that she would be “checking rooms” and assisting Austin to “open up” when Austin was not at the hotel. At no time was Johnson told that she had the title “Inspectress”; nor was she ever given a job description for such a position.<sup>2</sup>

Johnson spends about half of her typical workday “checking” the rooms that have been cleaned by the room attendants. Although not entirely clear, it appears that in performing this function, Johnson checks to see that the room has been cleaned in

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<sup>2</sup> General Manager Herman testified that at the time Johnson was hired she was told by Austin how to do the room assignments in Austin’s absence. In this regard, however, Herman admitted that he did not actually know what Austin told Johnson, but concluded that Johnson was “charged with the authority to assign out the work and run the department in the executive housekeeper’s absence.” Although Austin is currently employed by the Employer, she was not called to testify at the hearing.

accordance with the Employer's established policies and procedures, as set forth in the room attendant's job description. If Johnson discovers a room that has not been cleaned properly, she advises the room attendant who cleaned the room and instructs her to return to the room. There is no evidence that Johnson re-checks the room to ensure that the problem has been corrected. In the event that a room attendant refuses to follow Johnson's instructions, Johnson simply reports the matter to Austin. The record does not reflect what, if anything, Austin does after receiving such a report from Johnson. The remainder of Johnson's typical workday is spent cleaning guest rooms, assisting room attendants with equipment or other supply problems, and assisting in the laundry. Johnson may also train new room attendants on how to clean a room.

Although General Manager Herman generally testified that Johnson also has the "discretion to determine which among the associates should be assigned a particular task", and that Johnson can "decide how to rearrange associates without consulting the executive housekeeper or anyone of higher authority", no specific examples were supplied that Johnson had ever done so. Moreover, there is no evidence or claim that in assigning or reassigning work to room attendants, Johnson considers their particular skills and abilities. To the contrary, as described in more detail below, Johnson testified without contradiction that in Austin's absence, she has re-assigned room attendants to clean other sections at the room attendants' request.

There is no dispute that Johnson substitutes for Austin on the two days each week that Austin is not working at the hotel, as well as during Austin's vacations and other absences from work. General Manager Herman generally testified that Johnson is "in charge" of the housekeeping department in Austin's absence, and is responsible for "managing" that department in Austin's absence. In contrast, Johnson testified that on those days that Austin is not working, Johnson merely distributes the daily work assignments that have been prepared in advance by Austin, and that otherwise her duties and responsibilities remain the same as when Austin is present at the hotel.

Thus, according to Johnson, on a typical day when Austin is not working, no "lineup" is held. Instead, Johnson will simply distribute to each room attendant the daily room assignments which have been prepared in advance by Austin. According to Johnson's un rebutted testimony, this involves assigning each room attendant to the

section of the hotel where they regularly work, and that the room attendants then clean the occupied rooms within their section in accordance with the daily report. After the room attendants receive their daily assignment, Johnson performs the same duties as when Austin is working.

With regard to disciplining employees, General Manager Herman generally testified that Johnson is authorized to issue verbal and written warnings. In support of this claim, the Employer proffered evidence of one warning dated November 5, 2005. The warning, which was signed by both Johnson and Austin, notes that the employee was observed by Johnson and someone named "Tony" in a room talking on her cell phone. Herman was unable to recall any other warnings issued by Johnson.

Johnson testified that she can issue warnings, such as the November 5 warning, but only with Austin's approval. In this regard, she also testified that the November 5 warning resulted from an incident in which she and the Operations Manager (Tony) were looking for an employee named Stephanie in order to ask her a question. They found Stephanie in a room talking on her cell phone. The next day, Austin instructed Johnson to "write her up" for talking on the cell phone. Johnson further testified that she was never told that she had the authority to discipline any employee on her own. To the contrary, Austin told her that she had to first come to Austin regarding any discipline, and that she has never disciplined any employee without Austin's consent. There is no evidence or claim that Johnson has ever recommended that an employee be disciplined, or that Austin has ever issued any discipline based upon Johnson's recommendation. As noted above, Austin did not testify at the hearing.

With regard to the granting of overtime, General Manager Herman testified that, in Austin's absence, Johnson has the authority on her own to assign tasks that include overtime "based on whether for the good of the customer they should get a room cleaned or not cleaned." In support of this testimony, Herman recalled that on an unspecified date, when Austin was on vacation and the hotel was busier than expected, Johnson assigned an unspecified number of room attendants to work overtime in order "to get the rooms cleaned to accommodate business that was coming in." No further evidence was proffered documenting this incident, nor did Herman claim that Johnson authorized such overtime without the approval of higher authority. There is no evidence

or claim that Johnson was ever told that she had the authority to assign employees to work overtime. Moreover, Johnson testified that she does not have the authority to assign overtime, that she has never done so, and that she herself never works overtime.

With regard to employee requests to leave work early, Johnson testified that she will call Austin to get such authorization. If she cannot reach Austin, she will go to Herman for such authorization. There is no evidence or claim that Johnson on her own authority has ever permitted an employee to leave work early.

In support of its claim that Johnson is held accountable for the tasks performed by the room attendants, Herman testified that Johnson can be disciplined if she doesn't perform her duties, which include the inspection of the work performed by room attendants. However, there is no evidence or claim that Johnson has ever been disciplined for failing to properly inspect the work performed by the room attendants. Johnson admitted that in the event she has been instructed by Austin to issue a warning to a room attendant, she will do so because "if I don't write them up, then she [will] write me up."

With regard to the handling of "complaints and grievances", Herman testified that "if she was the only person there", Johnson has the authority to resolve "any guest complaints or guest issues. If a room was not cleaned to standard, she's charged with and responsible for making sure that the guest is taken care of and that we deliver the promise we've made". However, Herman provided no examples or instances when Johnson resolved an employee's complaint or grievance, rather than a guest's complaint.

Johnson does not attend the weekly meeting of all department heads. She does not have an office, nor is there any evidence that she utilizes Austin's office in the latter's absence. She has no involvement in the hiring process, nor does she have any involvement or input into the performance evaluations of room attendants, which are prepared by Austin. She wears the same uniform as the room attendants and works the same hours. She is currently paid \$9.53 per hour, whereas room attendants are paid between \$8 and \$9 per hour. The record does not reflect the hourly rates of other employees in the petitioned-for unit. There is no evidence or claim that Johnson's other

terms and conditions of employment differ from any other employee in the petitioned-for unit.

## II. Analysis and Conclusion

It is well-established that the burden of proof rests upon the party alleging that an individual is a supervisor. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Bennett Industries*, 313 NLRB 1363 (1994). The Board is reluctant to confer supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999). The Board has found that a particular indicia of supervisory status has not been established if the evidence is in conflict or otherwise inconclusive regarding that indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Volair Contractors, Inc.*, 341 NLRB No. 98, slip op. at 3 (2004); *Sears Roebuck & Co.*, 304 NLRB 193 (1991). Indeed, a lack of evidence is construed against the party asserting supervisory status. *The Wackenhut Corp.*, 345 NLRB No. 53, slip op. at 5 (2005).

Based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that Inspectress Edith Johnson possesses and exercises supervisory authority within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note the absence of any evidence that Johnson has the authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall, promote, discharge, or reward other employees, or to adjust their grievances, or to effectively recommend any of these actions. Thus, the only remaining basis for finding that Johnson is a supervisor is her direction and assignment of the work performed by the room attendants, her involvement in the discipline of room attendants, and her duties and responsibilities while substituting for Executive Housekeeper Austin.

The Board has historically found inspectresses in the hotel industry, with similar duties and responsibilities as Johnson, not to be supervisors within the meaning of Section 2(11) of the Act. See, e.g., *The Clarion Hotel-Marin*, 279 NLRB 481, 491 n. 15 (1986); *Laronde Bar and Restaurant, Inc.*, 145 NLRB 270, 272 (1963); *Tulsa Hotel Management Corp.*, 135 NLRB 968, 969-970 (1962); *Arlington Hotel Co.*, 126 NLRB

400, 405 (1960); *Floridian Hotel of Tampa, Inc.*, 124 NLRB 261, 268 (1959). I see no basis upon which to deviate from the Board's historical practice in the instant case.

More specifically, with regard to Johnson's assignment of the work performed by the room attendants, such duties are clearly routine in nature and do not require the exercise of independent judgment. See *Volair Contractors, Inc.*, *supra*; *Capital Cleaning Contractors*, 322 NLRB 801, 808 (1996); *NLRB v. Meenan Oil Co.*, 139 F. 3d 311, 321-322 (2<sup>nd</sup> Cir. 1998). In this regard, I note that all initial room assignments are made by Austin, even in those instances where Austin is absent from the hotel. To the extent that Johnson re-assigns room attendants to clean a different section of rooms, she does so at the room attendants' request, or to cover for absent room attendants. In the latter situation, she does not rely upon the particular skills and abilities of the room attendants. Rather, she relies upon the need to balance the overall workload and to get the work done, factors which do not require the use of independent judgment. See *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997).

With regard to Johnson's direction of the work performed by the room attendants, the evidence does not establish that she responsibly directs employees in a manner that requires the use of independent judgment. *Byers Engineering Corp.*, *supra*. More particularly, I note the absence of sufficient evidence establishing that Johnson is held accountable in any manner for the work performed by the room attendants. See *Northeast Utilities Service Co. v. NLRB*, 35 F.3d 621, 625-626 (1<sup>st</sup> Cir. 1994). In this regard, the fact that Johnson might be disciplined if she refused Austin's instruction to discipline a room attendant is based upon a refusal to follow her supervisor's instructions, rather than upon a failure to perform a requirement related to her direction of the room attendant's work. Moreover, to the extent that she directs the work of the room attendants when she discovers that a room has not been properly cleaned, I note that her duties and responsibilities are very closely circumscribed by the Employer's detailed instructions for cleaning rooms, significantly minimizing the extent of Johnson's discretion. See *Volair Contractors, Inc.*, *supra*; *Dynamic Science, Inc.*, 334 NLRB 391 (2001); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

To the extent that Johnson is involved in the discipline of room attendants, this appears to be primarily reportorial in nature. See *Laronde Bar and Restaurant, Inc.*,



supra; *Arlington Hotel Co.*, supra; *Floridian Hotel of Tampa, Inc.* supra; *NLRB v. Meenan Oil Co.*, supra. More particularly, I note the absence of any evidence that Johnson has ever disciplined a room attendant without Austin's prior instruction and authorization, or that Johnson has ever recommended that a room attendant be disciplined.<sup>3</sup> See *Volair Contractors*, supra; *The Wackenhut Corp.*, supra. Moreover, there is no evidence that Johnson was ever told that she possessed disciplinary authority.<sup>4</sup> *Volair Contractors*, supra.

Finally, with regard to those periods of time that Johnson substitutes for Austin in the latter's absence from the hotel, it is well established that where, as here, an individual is engaged part of the time as a supervisor, ". . . the legal standard for a supervisory determination is whether the individual spends a regular and substantial portion of his working time in a supervisory position or whether such work is merely sporadic and insignificant." *Gaines Electric Co.*, 309 NLRB 1077, 1078 (1992). See also *Aladdin Hotel*, 270 NLRB 838, 840 (1984). Thus, "mere substitution for a supervisor without the exercise of supervisory authority does not confer supervisory status." *Towne Plaza Hotel*, 258 NLRB 69, 80 (1981), and cases cited therein.

Although there is no dispute that Johnson regularly substitutes for Austin during the two days each week that Austin is not working at the hotel, the record does not establish that Johnson spends a substantial portion of that working time serving in Austin's Executive Housekeeper position. Rather, the evidence shows that during those

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<sup>3</sup> Thus, *Mountaineer Park, Inc.*, 343 NLRB No. 135 (2004) and *Progressive Transportation Services*, 340 NLRB No. 121 (2003), cited by the Employer in its post-hearing brief, are clearly distinguishable from the instant case. In *Mountaineer Park*, the Board found that the assistant housekeepers at a racetrack and gaming resort were supervisors because the evidence established that they had the authority to effectively recommend discipline. In this regard, the assistant housekeepers decided whether to initiate the disciplinary process by writing up proposed disciplinary recommendations with a specific level of discipline. In every instance, the proposed disciplinary recommendations were routinely approved by the director of housekeeping without further investigation. Similarly, in *Progressive Transportation Services*, the Board found a deck lead supervisor to be a supervisor because the evidence established that she had the authority to effectively recommend discipline. In this regard, the Board found that the deck lead supervisor had the authority to decide on her own whether to initiate the disciplinary process by recommending disciplinary action to the operations manager, that the manager did not conduct an independent investigation of the disciplinary issue, and that the manager typically followed her recommendation to impose discipline.

<sup>4</sup> Thus, those cases cited by the Employer in its post-hearing brief supporting the conclusion that it is the possession of supervisory authority that is determinative of supervisory status, rather than the exercise of such authority, are clearly distinguishable from the facts of the instant case.

periods when Austin is absent, the only additional duties performed by Johnson involve the routine distribution of the pre-determined daily room assignments at the outset of the workday, and any re-assignments necessitated by absences or balancing the workload. In this regard, the Employer proffered no evidence as to the amount of time spent by Johnson performing these additional duties. Indeed, it would appear from the nature of these duties that they require very little time to perform. Here to, there is no evidence that Johnson was ever made aware that she possessed Austin's supervisory authority in Austin's absence.<sup>5</sup> See *Volair Contractors*, supra. In the absence of any other evidence that Johnson performs, or possesses the authority to perform, any of Austin's other duties and responsibilities during Austin's absence from the hotel, there is no basis upon which to conclude that Johnson's substitution for Austin warrants a finding that Johnson is a supervisor under Section 2(11) of the Act. *Towne Plaza Hotel*, supra. Accordingly, I shall include Inspectress Edith Johnson in the petitioned-for unit.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time front desk clerks, housemen, room attendants, the inspectress, breakfast associates, wine bar associates and the night auditor employed by the Employer at its Westport, Connecticut facility; but excluding office clerical employees, the sales assistant, the maintenance engineer, the preventive engineer, and guards, professional employees, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

**Eligible to vote:** those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the

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<sup>5</sup> See footnote 4, supra.

election date and who retained their status as such during the eligibility period, and their replacements.

**Ineligible to vote:** employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by United Food And Commercial Workers, Local 371, CLC.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before February 23, 2006. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

#### **Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under "E-gov" on the

Board's web site at [www.nlr.gov](http://www.nlr.gov). This request must be received by the Board in Washington by March 2 , 2006.

Dated at Hartford, Connecticut this 16<sup>th</sup> day of February, 2006.

/s/ Peter B. Hoffman  
Peter B. Hoffman, Regional Director  
National Labor Relations Board  
Region 34